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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------------|-------------|----------------------|---------------------|------------------|
| 10/690,300 | 10/21/2003 | Keisuke Miura | 17135 | 6905 |
| 23389 | 7590 | 05/11/2006 | EXAMINER | |
| SCULLY SCOTT MURPHY & PRESSER, PC | | | VRETTAKOS, PETER J | |
| 400 GARDEN CITY PLAZA | | | ART UNIT | PAPER NUMBER |
| SUITE 300 | | | | |
| GARDEN CITY, NY 11530 | | | 3739 | |

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/690,300 | MIURA, KEISUKE |
| | Examiner | Art Unit |
| | Peter J. Vrettakos | 3739 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 February 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10-21-03.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

The action is final.

The application claims priority to Japanese patent applications: JAPAN 2002-311599 10/25/2002 and JAPAN 2003-310628 09/02/2003.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by

Panescu et al. (6,165,169).

Panescu et al.

Burnside discloses a method and system (see figures 39-41; columns 26 and 27) comprising a plurality of treatment tools (20,30), a driving device (176), a resistance value detecting device (174, 178, 184), a memory device (180), a judging device (178,188), a table reading device (178), an operating device (188), a resistance value data selection device (178, 188), a control section (188), a treatment section (12), a connector (18), and a temperature measuring device (temperature sensing intimated in col. 26:27-30 and col. 26:52-53). The ability of the electrodes to sense temperature is further disclosed ("diagnostic capability"..."derivation of an electrical characteristic" i.e. temperature in col. 25:66 through col. 26:1).

Note: the claims repeatedly include limitations toward "devices" with an intended use description such as a "table reading device". This approach to claiming an invention is problematic because it only vaguely claims structural limitations by attaching an intended use to the word, "device". It also could be argued that limitations such as "table reading devices" are indefinite and add no new structure to the claim. To this end, the rejection above applies prior art structural limitations liberally, which includes patented structures being asserted above as anticipating more than one of the claimed "devices" as well as some of the "devices" being anticipated by more than one of the patented structures, because of the Applicant's vague style.

Response to Arguments

Applicant's arguments filed 2-6-06 have been fully considered but they are not persuasive.

The Applicant argues two points throughout the amendment. First, that Panescu does not disclose a calibration device as claimed, and second that Panescu does not disclose a temperature sensing device as claimed. The Office respectfully disagrees. The language chosen to claim the Applicant's invention is narrative. The Applicant appears to be using words that are different from terms conventionally used in the art to describe physical structures that are normally found in the art. For example (and addressing the first of the two arguments presented by the Applicant), a calibration device for calibrating the driving circuit on the basis of the judgment results of the initial characteristics judging device, is construed broadly by the Examiner as being

anticipated by a feedback mechanism part of a controller that responds to feedback signals. With this claim interpretation in mind, the Office asserts that Panescu discloses a feedback mechanism/judging device (178), a controller/calibration device (174), and a power source (176). The related rejections are maintained. (The Office asks the Applicant to provide some sort of physical description of a "calibration device" as claimed.)

The Applicant's second argument is that Panescu does not disclose an environmental temperature sensing device for measuring the ambient temperature of the heating treatment device. Again, the Applicant has used claim language that is narrative, while choosing words not normally found in the prior art to describe a structure that is normally found in the prior art. The Examiner construes the temperature sensing device to be anticipated by a temperature sensor anywhere on the heating device. No current claim language prohibits this interpretation of the temperature sensing device limitation. "Environmental" is vague and can be interpreted as being any environment be it inside the patient or outside the patient. "Ambient" temperature can be any temperature be it inside the patient or outside the patient. To this end, the Examiner refers to Panescu's disclosure of electrode functional properties to anticipate the temperature sensing limitation (see col. 25:65 through col. 26:1-5). Disclosure of electrode functional properties including an "electrical characteristic" refers to sensed temperature. The related rejections are maintained. (The Office asks the Applicant to provide some sort of physical description of a "temperature sensing device" as claimed.)

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Burnside et al. (6,387,092).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Vrettakos whose telephone number is 571-272-4775. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pete Vrettakos
May 6, 2006

pv

Roy D. Gibson
ROY D. GIBSON
PRIMARY EXAMINER